

OPEN MEETINGS LAW AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the provisions of the Open and Public Meetings Act.

Highlighted Provisions:

This bill:

- ▶ clarifies the definition of meeting to include a premeeting or an executive committee meeting;
- ▶ requires that all closed meetings be recorded;
- ▶ requires that closed meetings generally be held in the same location as public meetings;
- ▶ requires that public bodies provide training on the requirements of the Open and Public Meetings Act to the members of a public body whenever a new member is elected or appointed;
- ▶ requires that the attorney general's office provide public bodies with at least yearly notice of any material changes to the requirements for the conduct of meetings under the act;
- ▶ provides penalties for violating closed meeting provisions; and
- ▶ makes technical changes and grammatical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:**AMENDS:**

52-4-2, as last amended by Chapter 89, Laws of Utah 1994

52-4-4, as enacted by Chapter 180, Laws of Utah 1977

52-4-7, as last amended by Chapter 311, Laws of Utah 2002

52-4-7.5, as enacted by Chapter 89, Laws of Utah 1994

52-4-9, as enacted by Chapter 180, Laws of Utah 1977

52-4-10, as enacted by Chapter 89, Laws of Utah 1994

ENACTS:

52-4-11, Utah Code Annotated 1953

52-4-12, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **52-4-2** is amended to read:

52-4-2. Definitions.

As used in this chapter:

(1) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction.

(2) (a) "Meeting" means the convening of a public body, with a quorum present, including a premeeting or an executive committee meeting whether the meeting is held in person or by means of electronic equipment, for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance meeting; or

(ii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required;

59 or

60 (B) the public body is convened solely for the discussion or implementation of
61 administrative or operational matters that would not come before the public body for
62 discussion or action.

63 (3) (a) "Public body" means any administrative, advisory, executive, or legislative body
64 of the state or its political subdivisions that:

65 (i) consists of two or more persons;

66 (ii) expends, disburses, or is supported in whole or in part by tax revenue; and

67 (iii) is vested with the authority to make decisions regarding the public's business.

68 (b) "Public body" does not include any:

69 (i) political party, group, or caucus; nor

70 (ii) any conference committee, rules committee, or sifting committee of the
71 Legislature.

72 (4) (a) "Quorum" means a simple majority of the membership of a public body, unless
73 otherwise defined by applicable law.

74 (b) "Quorum" does not include a meeting of two elected officials by themselves when
75 no action, either formal or informal, is taken on a subject over which these elected officials
76 have jurisdiction.

77 (5) "Recording" means an audio or an audio and video record of the proceedings of a
78 meeting that can be used to review the proceedings of the meeting.

79 Section 2. Section **52-4-4** is amended to read:

80 **52-4-4. Closed meeting held upon vote of members -- Business -- Reasons for**
81 **meeting recorded.**

82 (1) A closed meeting may be held:

83 (a) upon the affirmative vote of two-thirds of the members of the public body present
84 at an open meeting for which notice is given [~~pursuant to~~] under Section 52-4-6; [~~provided,~~]
85 and

86 (b) if a quorum is present. [~~No~~]

87 (2) A closed meeting is not allowed [~~except as to matters exempted~~] unless each matter
88 discussed in the closed meeting is allowed under Section 52-4-5[~~;~~ ~~provided, no~~].

89 (3) No ordinance, resolution, rule, regulation, contract, or appointment shall be

approved at a closed meeting. ~~[The]~~

(4) The following information shall be entered in the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding [a] the closed meeting; and

(b) the vote of each member of the public body, either for or against the [proposition] motion to hold [such a] the closed meeting~~[- cast by each member by name shall be entered on the minutes of the meeting].~~

(5) Except as permitted under Section 54-2-7.8, a closed meeting shall be conducted at the location where the public body regularly conducts its open meetings unless:

(a) the closed meeting is an electronic meeting conducted according to the requirements of Section 54-2-7.8; or

(b) it is not practicable to conduct the closed meeting at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

(6) Nothing in this chapter shall be construed to require any meeting to be closed to the public.

Section 3. Section **52-4-7** is amended to read:

52-4-7. Records of meetings.

(1) Written minutes or a ~~[digital or tape]~~ recording shall be kept of all open meetings. Such minutes or a digital or tape recording shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent;

(c) the substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken;

(d) the names of all citizens who appeared and the substance in brief of their testimony; and

(e) any other information that any member requests be entered in the minutes.

~~[(2) Except as provided in Section 52-4-7.5, written minutes or a digital or tape recording shall be kept of all closed meetings. Such minutes or digital or tape recording shall include:]~~

~~[(a) the date, time, and place of the meeting;]~~

~~[(b) the names of members present and absent; and]~~

121 ~~[(c) the names of all others present except where such disclosure would infringe on the~~
122 ~~confidence necessary to fulfill the original purpose of closing the meeting.]~~

123 (2) A recording of an open meeting shall be a complete and unedited record of all open
124 portions of the meeting from the commencement of the meeting through adjournment of the
125 meeting.

126 (3) The minutes and recordings are public records and shall be available within a
127 reasonable time after the meeting. A meeting record kept only by a digital or tape recording
128 must be converted to written minutes within a reasonable time upon request.

129 (4) All or any part of an open meeting may be recorded by any person in attendance;
130 provided, the recording does not interfere with the conduct of the meeting.

131 (5) Minutes of meetings that are required to be retained permanently shall be
132 maintained in or converted to a format that meets long-term records storage requirements.

133 (6) Written minutes or ~~[digital or tape]~~ recordings shall be public records pursuant to
134 Title 63, Chapter 2, Government Records Access and Management Act, but only written
135 minutes shall be evidence of the official action taken at such meeting.

136 Section 4. Section **52-4-7.5** is amended to read:

137 **52-4-7.5. Record of closed meetings.**

138 (1) If a public body closes a meeting to discuss the character, professional competence,
139 or physical or mental health of an individual under Subsection 52-4-5(1)(a)(i) or to discuss the
140 deployment of security personnel, devices, or systems under Subsection 52-4-5(1)(a)(vi), the
141 person presiding shall sign a sworn statement affirming that the sole purpose for closing the
142 meeting was to discuss:

143 (a) the character, professional competence, or physical or mental health of an
144 individual; or

145 (b) the deployment of security personnel, devices, or systems.

146 (2) (a) If a public body closes a meeting under Subsection 52-4-5(1) for any purpose
147 other than to discuss the character, professional competence, or physical or mental health of an
148 individual or to discuss the deployment of security personnel, devices, or systems, the public
149 body shall ~~[either tape]~~ record the closed portion of the meeting ~~[or]~~ and may keep detailed
150 written minutes that disclose the content of the closed portion of the meeting.

151 (b) A recording of a closed meeting shall be complete and unedited from the

commencement of the closed meeting through adjournment of the closed meeting.

(c) The recording and any minutes of a closed meeting shall include:

(i) the date, time, and place of the meeting;

(ii) the names of members present and absent; and

(iii) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

~~[(b)]~~ (d) (i) ~~[Tape recordings]~~ Recordings and written minutes of closed meetings are protected records under Title 63, Chapter 2, Government Records Access and Management Act, and any person who violates the provisions of Section 63-2-801 is subject to the criminal penalties contained in that section.

(ii) Notwithstanding the provisions of Subsection 63-2-202(4)(c), ~~[tape]~~ recordings and written minutes of closed meetings, as protected records, may be disclosed pursuant to a court order only as provided in Section 52-4-10.

Section 5. Section **52-4-9** is amended to read:

52-4-9. Enforcement of chapter -- Notice of changes provided by attorney general -- Suit to compel compliance.

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

~~[(2)]~~ (3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to compel compliance with or enjoin violations of this chapter or to determine its applicability to discussions or decisions of a public body. The court may award reasonable attorney fees and court costs to a successful plaintiff.

Section 6. Section **52-4-10** is amended to read:

52-4-10. Action challenging closed meeting.

(1) Notwithstanding the procedure established ~~[in]~~ under Subsection 63-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the ~~[tape]~~ recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate the ~~[law]~~ provisions of this chapter governing closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the ~~[tape]~~ recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated the ~~[law]~~ provisions of this chapter governing closed meetings, the judge shall publicly disclose or reveal from the ~~[tape recordings]~~ recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

Section 7. Section **52-4-11** is enacted to read:

52-4-11. Training.

Within 60 days of the election or appointment of a new member to a public body, including school boards, that is subject to the requirements of this chapter, the presiding officer of the public body shall ensure that the members of the public body are provided with training on the requirements of this chapter.

Section 8. Section **52-4-12** is enacted to read:

52-4-12. Criminal penalty for closed meeting violation.

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Legislative Review Note

as of 10-19-05 1:42 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note

as of 12-19-05 9:44 AM

The Government Operations Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0014

Open Meetings Law Amendments

12-Jan-06

2:24 PM

State Impact

Provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Provisions of this bill can be implemented with existing resources.

Office of the Legislative Fiscal Analyst